**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 1168 OF 2005**

Vasant Jyoti Gavali ... Appellant

V/s

Gangadhar Mahadev Gavali & ors. ... Respondents

Mr. Macchindra A. Patil for the appellant.

**CORAM: P.V. KAKADE, J.**

**DATED: 5TH OCT., 2005**

**P.C.:**

1. The appellant has preferred this appeal against the judgment and order passed by the Ad-hoc Addl. District Judge, Pandharpur dated 15.4.2005 whereby the appeal was dismissed and order passed by the Civil Judge, J.D., Sangola dismissing the suit was confirmed.

2. Heard learned counsel for the appellant. Perused the record.

3. The plaintiff had filed the suit initially for perpetual injunction simplicitor and thereafter by seeking amendment it was converted into the suit for

possession of encroached portion of the property. According to the plaintiff, the defendants had encroached upon his part of the property pending the suit by removing the Bandh in between the properties.

Defendants contested the suit inter-alia denying the allegations and sought dismissal of the suit.

4. The learned Trial Judge adjudicated the dispute on merits holding that the plaintiff had not proved that there was any encroachment on the part of the defendants and there was also no obstruction to the possession of the plaintiff and, as such, the suit came to be dismissed.

5. The appeal came to be filed in the Court of Ad-hoc Addl. District Judge, Pandharpur, who after hearing both parties, concurred with the findings recorded by the Trial Court and dismissed the appeal. Hence the present appeal.

6. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal. On perusal of the judgments of both the Courts below, it is apparent from the record that the

entire land held by the parties to the extent of 4 Hectors and 81 Ares wherein both parties have 1/2 share is an admitted position. It is the case of the plaintiff that the defendants had encroached over his land and for that purpose the T.I.L.R. was appointed as the Court Commissioner for carrying out measurement in the suit property. However, his report Exh. 46 and map Exh. 47 show that it nowhere disclosed the encroachment on the property of the plaintiff at the hands of defendants and, as such, the plaintiff was held to have not proved the alleged encroachment at the hands of the defendants. In view of this concurrent finding recorded by both the Courts below, I have no hesitation to hold that the appeal is devoid of any merits for want of involvement of any substantial question of law and, as such, the appeal deserves to be dismissed and stands dismissed with no order as to costs.

.....